A G E N D A

PART 201 DISCUSSION GROUP
Brownfield Work Group
Michigan Department of Environmental Quality, Lansing, Michigan
November 9, 2006

9:00–9:05 AM	Welcome and Introduction	Bill Rustem
9:05–9:20 AM	Purpose statement **Draft:** To promote and facilitate the revitalization, redevelopment, and reuse of certain property that is contaminated (real or perceived), blighted, or functionally obsolete.	
9:20–10:00 AM	Conceptual approval	Grant Trigger/Jim Tischler
10:00–10:40 AM	Scoping meeting	Ann Couture
10:40–11:20 AM	Brownfield grants and loans criteria	Susan Erickson
11:20–11:50 AM	Other issues: State agency partnerships Brownfield facilitators	John Czarnecki/All
11:50–Noon	Next steps and assignments	Bill Rustem

SEMCOG

MEMO

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November 3, 2006

TO: William R. Rustem, Public Sector Consultants

FROM: Kevin Andrew Johnson, SEMCOG

SUBJECT: Summary Points from SEMCOG Workshop on Brownfield Redevelopment

SEMCOG conducted a workshop earlier this year that brought key brownfield stakeholders together for dialogue on this important issue, including state officials, users of the state brownfield program, and interested parties. Over 90 people attended this event on February 8, 2006 at the SEMCOG offices in Detroit. A panel of representatives from local government, banking, environmental consulting, and legal services provided comments and suggestions for improving the brownfield program. The following reflects some of the issues identified by stakeholders and is not a comprehensive list.

- The feasibility of many projects has become less certain, due to uncertainties regarding whether projects will be permitted to capture school taxes for tax increment financing (TIF). As a result, projects may not be submitted to the state for school tax capture. This can result in a great strain on local funds as the project timeline is extended.

- The length of time and cost needed to work a project through the state's pipeline for approvals and determination of funding eligibility has killed projects. This underscores the common perception that it is easier for a project to build on a greenfield than a brownfield. Moreover, simply "leveling the playing field" is not enough to draw development away from the greenfields – the state needs to expand the use of already existing financial incentives, and to create new funding mechanisms to encourage brownfield development.

- Communities not designated as being "core communities" still have portions of their communities that are effectively "core areas." As such, these non-core communities need to have additional incentives to redevelop their brownfields. On the other hand, if "core community" incentives were to be extended to non-core communities, the benefit of being a "core community" would be diminished. This is a conundrum we must address.

- The state needs to expand the definition of "eligible activities" for use of tax increment financing on brownfield sites to include demolition and asbestos and lead paint abatement.

- Local governments would be able to more fully utilize the brownfield program if they were able to capture more funds for administrative activities. Currently, administrative expenses are limited to a statutory cap of $75,000, with additional salaries and administrative costs being subsidized elsewhere, typically by the general fund. This capped amount is inadequate for communities with a growing brownfield program requiring greater resources in administration.

- There is a perception in the marketplace that the MDEQ's approval process for Category S BEAs and for Section 7A Compliance Analyses (Due Care Plans) is too burdensome and unpredictable. The market's reaction has been to expedite the development process by not submitting projects for a determination of adequacy – which is not necessarily the most prudent decision. (On a related note, the Part 201 Complexity Group has commented that there is a need for an "80/20" Division of Process to advance a majority of projects that unnecessarily utilize numerous resources. The brownfield program would be improved if more resources were focused on the truly complex projects and less on the simpler ones. Generally about 80% of the projects probably would fall into a less complex category while the other 20% belong in a more complex one. Screening tools or questionnaires should be developed to provide a mechanism that would expedite the process.)

FOR DISCUSSION ONLY
Prepared for Part 201 Discussion Group
Liability Committee
Rev. 1.0, Date: October 5, 2006
Prepared by Alan D. Wasserman

Conceptual Framework For Changing to An Environmental Cleanup Permit Program

Overview

- Retain liability standard
- Retain ordinary transaction due diligence standards
- Require permits as controlling documents
- Permits replace BEA and due care plans, and portions of RAP, interim response, and IRDC plan components.
- Permits contain O&M requirements
- Permit requirements replace institutional control requirements for property covered by permit.
- Permit identifies the relevant criteria and performance standards.
- Five year renewable permits
- Permits can be transferable.
- Two types of permits: Remediation Permit and Use/Occupancy permit. Remediation permits are for cleanups. Use/Occupancy covers due care and use restrictions. Use includes owning fee or land contract interest.
- Allow general permits/certificate of coverage methodology for appropriate recurring situations. (such as small spill cleanups)
- Enforcement
    - Civil Penalty for failure to get permit / permit violations
    - Cost recovery still available against liable parties
- Any interests in property that are not "use or occupancy" would NOT require a permit… eliminates "lender" liability. Upon foreclosure, a lender would have to obtain an assignment of existing permit or get its own permit related to use upon foreclosure.
- Provides more compatible framework for working with requirements from air/water permit programs.
- Emphasis on performance instead of plans

Liability Scheme

Liable Parties: The liability of a person can still be determined in the same was as current law (responsible for an activity causing a release). Liable parties are liable: (1) for response activity costs incurred by the State or any other person; and (2) for obtaining

a remediation permit. Failure to apply for a Remediation Permit would subject the liable party to fines or penalties. Compliance with an RP would bar cost-recovery and obviously would shield against civil fines and penalties.

Non-liable parties: A Use/Occupancy Permit ("UOP") will generally be required of any non-exempt person who uses or occupies a "facility" (except possibly in the case of migrating groundwater). Use or occupancy will need to be defined, but the intent is that every tenant or owner of a facility should be covered by a UOP permit. Failure to apply for a UOP permit would subject the person to fines and penalties. A UOP can include additional response activities if the permittee wishes to eliminate some permit conditions pertaining to use. Compliance with a UOP would be a shield against civil fines and penalties. Some consideration should be given as to whether to require a UOP in situations where the only issue is the migration of contaminated groundwater. Currently, persons in that position are not liable for response costs nor for due care (26(4)(c)) Because of the property rights at issue, it is probably better to make a UOP optional in that case. Possible exemptions to the UOP requirement include residential users (similar to 26(3)(f) and owners of certain types of easements (for transportation, etc).

Cost Recovery: "Response activity" needs to be redefined so as to be limited to response activities done pursuant to permit. After these changes come into effect, response activities that are not done pursuant to a permit are not recoverable under the statute.

Grandfather: A transition must be made to the new program. Permits should be required within a specified time frame (perhaps one year) for any ongoing response activities except for those that meet the current definition of "complete" before the permit requirement kicks in. An exception might be needed for response activities that are governed by consent judgments or that are otherwise under court supervision.

Due diligence: The liability structure regarding innocent purchasers and due diligence should remain. A person who does the appropriate environmental due diligence under the current standards, and who is an innocent purchaser, would not be subject to fines or penalties for failure to get a UOP. However, if it is subsequently determined that the property is a facility, the permit requirement would kick in at that time. We should also conform the existing due diligence scheme to CERCLA "all appropriate inquiry" so that "one size fits all" for transaction screening studies. If due diligence shows the property is a facility, the person will be subject to the UOP requirements (including fines and penalties for failure to get a UOP).

Notice on Transfer: Permits (and statute) can include a provision that any permittee provide notice and a copy of permit to transferee. UOP permit should be transferable with an affidavit that uses will be consistent.

Permit Application

The information required in the application should be sufficient to establish general and specific permit conditions. The level of information and detail required will be different for each type of permit.

Remediation Permit Appplication(RP)

- Five year renewable permit
- Required for all liable parties; optional for any one else
- Identify list of contaminants of concern (anything above generic residential criteria). Certify that at time of application, no other known contaminants present.
- Identify type of land-use, and conditions needed to protect users. Permit must be consistent with current land use.
- Identify relevant exposure pathways.
- Identify any other permits already in place for the facility.
- Identify any interim response issues known at time of application (abandoned drums, imminent hazards, fire or explosion hazards)
- Include any reports or data available regarding contamination.
- Propose conceptual response plan (so appropriate permit conditions can be drafted). For example, pump and treat plus containment for groundwater, capping, etc. Note: The idea is to have enough information to draft conditions that must be met in the permit, not to "approve" the selection of an approach.

Permit Content

Emergency Response Permit (ERP)

- Special, limited permit intended to allow streamlined or general permit for immediately addressing emergency situations, such as spill response, fire or explosion hazards, or immediate dangers.
- Should be a general permit that can be obtained through a certificate of coverage.
- Should be able to file certificate of coverage AFTER taking actions as allowed under general permit (can have required time frame).
- General conditions: Allow taking of appropriate actions to eliminate or mitigate threat.
- Does not substitute for or eliminate need for RP or UOP.

Remediation Permit

- List of chemicals of concern and applicable criteria for the facility
- Obligation to implement conditions and requirements of the permit to meet applicable criteria.
- For soils, performance standards should be elimination of pathway or attaining criteria by removal, treatment in place, or barriers.
- For groundwater, performance standards can be halting migration and/or meeting criteria through pump and treat, in place treatment, attenuation, or barriers and use restrictions. Impacted water supplies must be replaced by permittee.
- Deadlines to demonstrate through an approved performance monitoring plan that the applicable criteria are met. This deadline can be amended if during the permit term a different deadline is proposed and accepted by DEQ. Deadlines should be established like BAT – based on professional judgment of how long it should take based on the identified conditions. For example, short deadlines may be appropriate for capping a soils only problem or where a remedy is going to rely primarily on observance of permit conditions related to use of property. Long deadlines may be appropriate for groundwater remedies.
- Compliance is measured by:
    - Timely submittal of deliverables.
    - Completion of response activities on schedule identified in permit.or approved deliverable
    - Attaining criteria as listed in the front of the permit and as shown in performance monitoring report(s).
- Interim Response Assessment / Implementation Schedule (if needed)
    - If assessment is needed, require assessment and report within __ days.
    - Require construction of appropriate interim response measures (as per Rule 526(2)) within ___ days.
    - Require interim response implementation report within ___ days.
- Response Activities permitted: The permit should contain conditions (can be general) that permits response activities at the facility intended to meet criteria identified in the first part of the permit.
- Performance Monitoring Report: This is the report that should show the identified criteria have been met, along with any applicable permit conditions regarding use restrictions etc. A PMP that demonstrates that generic residential criteria are met can terminate a permit and the need for anyone else to get or hold one. Otherwise, even if no active remediation is required, a permit will be needed to require the conditions related to use and operation and maintenance be observed. After the PMP, it may only be necessary to file response activity reports if remedy is in the O&M plus use restrictions phase.

- Response Activity Report: (like DMRs) – periodic report (quarterly?) of response activities taken to meet criteria and permit conditions. Note that response activity report should be required to be submitted by the person performing response activities, and a certification for whom the response activities were performed. . The report would include: new response activities undertaken (if any), monitoring results, new data, and/or operation and maintenance activities, inspection reports, etc.

User/Occupancy Permit

- Identify contaminants of concern and applicable criteria
- Sets forth the conditions for meeting due care obligations. Removing drums, closing USTs, installing barriers, prohibiting or restricting use of groundwater, and general description of allowed (or prohibited) uses consistent with due care.
- Notification of off-site migration (as per rule) to be provided by Licensee to DEQ.
- Response Activity Report: (annually?) documents monitoring and maintenance of permitted due care activities (inspection reports, etc).
- Additional Response Activities: Licensee can apply for additional response activities if desired, either with initial application or as an amendment. Additional Response Activities may lead to the addition to the permit of a PMP.

Special Situations

What should happen if there is more than one liable party?

Permits are required for each party. If one liable party has already obtained a permit, the same permit should issue to each other liable party that applies. The requirements of the permit are enforceable against each liable party. A liable party that does not perform the permitted response activities: (1) is liable for cost recovery from the party that did perform the activities, and (2) is subject to fines, penalties and enforcement from DEQ for failure to meet permit requirements. The Response Activity Report should make it clear which liable parties have done the work.

In order to handle multiparty sites and disputes, the following process could be followed:

- If only one liable party applies for a permit, that liable party gets cost recovery against other non-participating liable parties, and a judicial claim for fines and civil penalties against them.

- If more than one liable party applies for a permit for the same facility, then the permit issued to each should be the same, with a default provision in each permit that specifies a proposed cost allocation (per capita). This allocation can be reviewed and adjusted in a contested case proceeding. The final allocation can be used to adjust past costs in a settlement or if needed, after judicial action on a cost recovery claim.
- Permit conditions are jointly and severally enforceable against any liable party permittees without regard to the proposed allocation.
- There should be a general permit and buy-out provision for "de minims" liable parties. Once a de minimis party has "bought out" of a site, the general permit and de minims buy out provisions should immunize that party from cost recovery or further action regarding that site. The general permit would continue until the site was cleaned up.

What should happen if the liable party is not the owner, or is not the only owner or occupant of a facility?

A facility can have both a UOP (for non-liable parties) and a RP (for liable parties). A UOP will include general provisions that require access be provided to the DEQ or an RP to perform response activities under an RP. An RP will include general provisions that protect the property rights of persons using/occupying the property. Conflicts should not be significant unless there is a change in use. In this case, there are two solutions. One is that whoever obtains the first permit obtains the right to continue a permit consistent with that use. So, if an RP is established for a facility, which is then sold/occupied by another, that person's UOP will identify the prior RP and use restrictions as applicable.

What should happen for off-site contamination?

The RP should cover the entire facility, regardless or property lines. Every parcel within the facility will need a UOP unless an exemption applies.

Is there still a role for institutional controls?

Probably. Institutional controls, especially ordinances, may be needed to cover facilities that are exempt from the permit requirements.

Review

- Permits would be reviewed under APA contested case procedures.
- Court action could be sought to enforce obligation to obtain permit or for fines or civil penalties.
- Court action available for cost recovery claims.

Public Involvement

- RP should have some comment procedure as draft NPDES permit
- UOP should not need public involvement.

Enforcement

Fines and penalties should be different for RP and UOP. Fines should be stiff for RP to induce liable parties to apply for one. Fines for UOP should be large enough to induce compliance, but not so large as to be punitive.

FOR DISCUSSION ONLY
Prepared for Part 201 Discussion Group
Liability Committee
Rev. 1.0, Date: October 16, 2006
Prepared by Alan D. Wasserman

Liability Committee

Issue	Reference	Discussion
BEA/Due Care Process	Liability (10/19)	A permit replaces "BEA" for liability protection, and specifies in an enforceable way, with notice, the continuing due care obligations.
Notice of brownfield activities to Liable Parties	Liability (10/19)	Permits would be subject to general notice provisions as are other permits. Specific notice can and should be required to Liable Parties if known, at time a Use/Occupancy permit is obtained.
Notice of Institutional Controls	Liability (10/19)	A permit would provide the notice and organic provisions that a permittee must comply with. This would provide notice and ongoing compliance duty
Intervening non-liable owners	Liability (10/19)	Would not have to obtain a permit once it transacted the property. No continuing obligation, since those would be shared between current permit holder and liable parties (if any)
Continued review of BEA by DEQ	Liability (10/19)	DEQ would have a role in any permit, and a permit replaces the BEA. A "general permit" may have less site-specific review.
Disclosure MDEQ during transaction	Liability (10/19)	There would be no more undisclosed sites. Any site that needs a permit would be in the permit system, and can be identified during a transaction screen.
Liable Party v. Brownfield and State owned sites cleanup standards	Liability 10/19	Remediation Permit would contain more requirements than a Use/Occupancy permit. Non-liable parties can elect to get an RP, but it would not be required. UOP is due care, not remediation.
Are Due Care obligations appropriately defined?	Liability 10/19	A shift to a permit paradigm allows for a change in the way due care is defined, but the topic of what is appropriate "due care" STILL NEEDS TO BE NAILED DOWN.
Long term performance of due care	Liability 10/19	Permit provides for specific and continuous method for assuring due care is identified and that the right person knows what he or she must do. These obligations will continue through subsequent permits.
How to handle previous determinations?	Liability 10/19	Can be converted to UOP permit.
Section 14 duties	Liability 10/19	If a new site is created or discovered, the permit obligation for and RP commences. If a permit is obtained, the condtions in the permit can address

		each of the affirmative obligations in Section 14.
Compliance – use of fines and penalties	Attachment B 1(b)	Enforcement of the obligation to obtain a permit and then for failure to meet permit obligations is more straightforward. Can and should incorporate fines and penalties to secure compliance. Focus is on Liable Parties to do work rather than on cost recovery
Compliance – site identification	Attachment B 1(b)	Permit requirement for all sites of contamination plus existing transaction screen process will provide notice to DEQ of all sites subject to permit.
Compliance – reduction in time and resources needed to identify LP	Attachment B 1(b)	Permit requirement changes complicated cost recovery action into something simpler, does not require expenditure of resources to recover costs. Permit system can include ability of any person to enforce (like under CWA or CAA).
Compliance – reporting/disclosure	Attachment B 1(b)	Permit system includes reporting obligations. By setting objectives and criteria, permit requirements can be somewhat self-implementing.
Compliance – Use of CERCLA	Attachment B 1(b)	Not addressed by permit paradigm
Compliance – what is "diligently pursue"	Attachment B 1(b)	Permit specifies requirements and time frames. Removes ambiguity.
Finality – Need to assure continuous response is balanced with finality	Attachment B 1(c)	Permit becomes the "finality" endpoint. Once you have a permit, not subject to fines and penalties asl long as in compliance. Ongoing response activities are covered by permit. On-going permit requirement can terminated upon "completion" of response activities. Long-term controls (barriers, use restrictions) will be carried in future permits.
Finality – Liability Release for completed cleanups	Attachment B 1(c)	The permit requirement terminates when the criteria identified have been met. On-going maintenance/use restrictions would be the obligation of the current owner/operators. Does this help the problem?
Balance of risk-sharing between regulated parties and the public	Attachment B 1(c)	Permit model protects public through response activities and due care. Liable party must do response activity and maintain it, users have to have a permit that establishes due care. Public is protected against residual risk.
Eliminate RAP? Replace with ?	Attachment B 1(c)	Remediation permit replaces RAP.

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Rev. 1.0, Date: October 16, 2006
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Brownfield Committee

Issue	Reference	Discussion
Partnerships	Brownfields 10/16	Unclear if permit process offers opportunity to improve interagency coordination
Unified Application Format	Brownfields 10/16	A permit system simplifies *some* of the problems, but only as they relate to the elements that must be met to obtain a permit. However, a permit application and or permit can have some use in standardizing environmental information transmitted to various agencies.
Response Time	Brownfields 10/16	Permit system can (if done correctly) reduce the time it takes for development of a document regarding environmental compliance issues. Simple environmental projects can qualify for general permits.
Staff Training	Brownfields 10/16	Permit system will probably complicate staff training.
MDEQ Facilitators	Brownfields 10/16	None
Eligible Activities	Brownfields 10/16	Permit system can allow permit conditions to specify brownfield eligible activities on a site-specific basis, thus allowing more flexibility if desired. What is eligible can be defined in the permit as well (or instead of) by statute.
Work Plans	Brownfields 10/16	UOP or RP would replace need for work plan. Use of general permits can eliminate log jams. Permits would encompass all requirements in one document, and would not be piece meal.

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Liability Committee
Rev. 1.0, Date: October 16, 2006
Prepared by Alan D. Wasserman

Complexity

Issue	Reference	Discussion
Number of cleanup criteria and exposure pathways	Attachment B 2(a)	Issue not directly addressed; however, permit conditions can be used as "off-ramps" so that specific criteria would not apply provided that condition is maintained. For example, no foundations or ordinary construction vapor barriers may remove indoor air pathway from permit.
Probabilistic risk assessment	Attachment B 2(b)	Issue not directly addressed; however conditions used to do a PRA can be reflected in permit conditions.
GSI Pathway	Attachment B 2(c)	Not addressed.
ARARs	Attachment B 2(d)	Not addressed
Improvement of use of air criteria	Attachment B 2(e)	A permit might be used to establish use conditions that obviate the need for the permittee to assess or address these criteria.
Goal of regulation and guidance	Attachment B 2(f)	Use of rules and guidance could follow formulas used in other permit programs (this does not necessarily solve the complexity problem)

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Prepared for Part 201 Discussion Group
Liability Committee
Rev. 1.0, Date: October 16, 2006
Prepared by Alan D. Wasserman

Program Administration

Issue	Reference	Discussion
Make relation between parties more of a partnership	Attachment B 3(a)	Permit paradigm changes the relationship two applicant / permit writer. This may or may not solve or improve this issue, but it changes things.
Balance between regulatory and service functions	Attachment B 3(a)	Permit paradigm, with different types of permits, actually unifies the role of DEQ. Service and regulation is provided through the same product. However, different types of products can allow for distinctions between the customers.
Reinforce distinction between liable and non-liable parties	Attachment B 3(a)	Permit distinctions can clearly delineate between what is expected of liable parties and others. The paradigm actually proposes that a liable party must get an RP. Other permits available for other types of customers.
Project scooping meetings?	Attachment B 3(b)	For site-specific permits, communications with the applicant can be made part of the process. This is done in other permit programs. Also, draft permit stage allows for applicant input (and public input).

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Liability Committee
Rev. 1.0, Date: October 16, 2006
Prepared by Alan D. Wasserman

List of References

Brownfields 10/16: Brownfields Work Group (Draft 10/16/2006) questions and observations for discussion on October 16 (Amy Spay).
Liability 10/19: Liability/Compliance Workgroup -- Background and Proposed Discussion Topics (October 19 Meeting)(Mark Coscarelli)

Attachment A: Part 201 Discussion Group: DEQ Issue List for Phase II (Distributed September 29, 2006)

Attachment B: Part 201 Discussion Group: Summary , Recommendtations to Subcommittees, and Process Description (January 2006)

MDEQ Letterhead

Date

Re: Act 381 Work Plan

Dear Owner:

MDEQ staff has received and reviewed the 381 Work Plan for the New City project dated February 1, 2007. That Work Plan requested approval of site investigation and remedial activities totaling $2,500,000, consistent with the draft Brownfield Plan dated January 1, 2007 for the proposed redevelopment project.

Based on MDEQ's review of the work plan and related information, we hereby approve the expenditure of $2,500,000 subject to the following conditions:

1. New City Brownfield Redevelopment Authority review and approval of all expenditures consistent with the scope of work defined in the work plan.

2. Technical work plans describing the field investigation work be provided to MDEQ district staff and reviewed and approved in advance of field implementation.

3. Remedial activities be described in more detail to MDEQ staff prior to field implementation and be reviewed and approved by MDEQ staff prior to implementation.

4. Any significant modifications and remedial activities, scope, or techniques be reviewed by MDEQ staff prior to implementation.

5. That a final project completion report be filed with MDEQ summarizing the work performed consistent with Part 201 requirements.

If you have any questions with respect to the review and approval of these conditions, please do not hesitate to contact MDEQ staff. In the meantime, you may contact Bob Jones for any follow-up review, comments or questions or any modifications to the scope of work.

MDEQ staff commit to providing 90 day turnaround review of any work plans or modifications to remedial activities consistent with the activities of this approval. Please note that any expenditure in excess of the $2,500,000 will not qualify for school tax capture unless Brownfield Plan and work plan are modified accordingly and submitted to MDEQ for approval.

Sincerely,

MDEQ

FOR DISCUSSION ONLY
Prepared for Part 201 Discussion Group
Brownfield Redevelopment Committee
November 9, 2006
Prepared by Anne P. Couture

BROWNFIELD REDEVELOPMENT PROJECTS
SCOPING PROCESS AND MULTI-AGENCY COORDINATION
A COORDINATED, "ONE STOP SHOPPING" APPROACH

A "Uni-application" for Michigan Brownfield Redevelopment assistance would be completed by an applicant (prospective purchaser, developer, owner, etc.) with the support of the local unit of government (LUG) where the project is located (signature of LUG required on application). This application would include information about the project sufficient to support a review by MDEQ and MEDC for consideration of grants, loans, TIF, tax credits, or other Brownfield incentives that may be available.

(It hopefully follow that policies, procedures and criteria among each agency involved in Brownfield projects are effectively synchronized so as to reflect a cohesive Brownfield Redevelopment Policy at the State level.)

The uni-application would not have a fee associated with it. Upon receipt of a "uni-application" by the Brownfield Redevelopment Coordinating Office (BRCO) (MEDC? Governor's Office?), each State agency involved in the Michigan Brownfield Redevelopment Program would be provided a copy of the application for review. Within 10 days of receipt of the application, the BRCO would schedule a meeting with the applicant to discuss the project, the LUG in which the project is located, and a "Brownfield Redevelopment Specialist" representing each applicable State agency that may be involved in the project. For example, some projects may only involve MEDC and the LUG; others may involve the LUG, MEDC, MDEQ, and MSHDA. These agency representatives will stay involved with the project until their agency no longer has a role in the project, and will the primary contact from their respective agencies with the applicant, the BRCO and the LUG.

The objective of the Scoping Meeting is to define the project sufficiently to allow the State agencies and the LUG to determine applicability and scope of the various Brownfield incentives that may be available to the project. For example, MDEQ could offer a 50/50 Brownfield Grant/Loan; MEDC could consider a SBT Credit, as well as use of Brownfield Tax Increment Financing to pay for eligible activities related to infrastructure improvements; and the LUG could offer its local tax increment. MDEQ, MEDC, and the LUG could also identify additional information that may be needed to process an application. If all of the Michigan Brownfield Redevelopment incentives for a project could be discussed at the same time during this scoping meeting, policies among agencies (and within agencies) can be aligned an there would be greater consistency within and among the various programs and agencies. Furthermore, the applicant could move forward with some level of certainty as to the type and scope of brownfield assistance available to the project, what additional information may be necessary, and the time frames involved.

After the scoping meeting, each Brownfield incentive that the Brownfield Redevelopment Specialists and local unit of government indicate would be available to the project would be accessed through submittal of a brief application and fee. (Application for grant/loan, application for TIF financing; application for SBT credit, application for inclusion in a Brownfield Plan.) The scope of information required for the application would be limited to any additional information requested during the project scoping meeting. It is intended that the application form be very brief, and only a supplement to the information provided in the initial uni-application.

The applications for the various incentives will be directed to the agency Brownfield Redevelopment Specialists who attended the Scoping Meeting. These BRS will be responsible for tracking the application within the agency to assure that the applicable Brownfield incentive is processed and provided for in an effective, efficient, and timely manner. These specialists are, in essence, the champions for that Brownfield Project within their agency. Their role will be to coordinate with each office/division who is involved with the project; and to also assure that all Agency interaction with the project reflects the State's commitment to that Brownfield project. (Example: a wetland permit application for a project that has received an SBT credit and grant/loan funds would be tracked by the

MDEQs BRS for that project, and the BRS would also serve as a facilitator to resolve issues if they arise. In the event of an issue that may involve more than one Agency, then the Brownfield Redevelopment Coordinating Office would be available to help resolve problems and issues.

Finally, the individual Divisions/Sections who may have responsibilities related to brownfield projects utilizing State Brownfield Incentives must assure that staff assigned to implement brownfield projects utilizing State incentives are trained to understand and properly manage the nuances of redevelopment projects, including tight timetables, short turnaround times, and the need for effective problem solving. This also involves assuring that staff responsibilities are commensurate with their authority.

This approach would:

- compress time frames for brownfield projects through a "one-stop shopping" approach and minimizing the time and expense of preparing various extensive applications for different Brownfield programs
- will provide greater certainty to projects with respect to receipt of State Brownfield incentives
- will improve communication between state agencies and among Divisions/Sections within agencies
- allow for all projects receiving State Brownfield Redevelopment assistance to be tracked using the similar metrics

ACT 381
PRELIMINARY "WORK PROGRAM"
SUBMITTAL/REVIEW PROPOSAL

Proposal Objectives

- Continue review authority by MDEQ to review and approve specific work plan tasks, as required by Act 381.

- Provide for submittal of work plans in preliminary format to identify the anticipated potential scope of eligible activities proposed to support a project planned at an Act 381 eligible property, including demonstration of necessity of eligible activities in order to receive MDEQ approval.

- Increase time and cost efficiency in (1) planning for possible Act 381 eligible activities by submitters; and (2) final review of necessary eligible activities by MDEQ.

Background

At present, statutory requirements and rules established by MDEQ for review of Act 381 work plans have developed into what may be identified as a lengthy and sequential "task-by-task" system. If a submitter (developer/local BRA) wishes to have MDEQ approve an Act 381 work plan, the current system requires submittal of a work plan specifying the immediate task(s) with known information about a facility site – BEA activities, Due Care activities, or Additional Response activities. If a portion of the work requested is reviewed and approved, the submitter may undertake the activity, but once completed and in order to proceed to the next activity, preparation of a work plan "amendment" is often necessary, for which the submittal-review process is again engaged. This sequential "task-by-task" process is both time- and cost-intensive to both the submitter and MDEQ. Moreover, this process causes financing doubts and delays and may jeopardize a redevelopment project if the ultimate users cannot wait.

Proposal Mechanics

To address these concerns, this proposal seeks to introduce a review/monitoring process currently in use by many local units when site plans are submitted pursuant to the Michigan Zoning Enabling Act. This system may be described as a "preliminary-final" review/approval process, whereby a submitter presents a preliminary site plan and a review is performed on this preliminary plan, often with the knowledge that one or more items may need modification once additional information is known.

In this situation, a "preliminary" approval may be given which requires (1) meeting contingent requirements to successfully finish the "approval", (2) submittal of revisions in a final plan, (3) a combination of 1 & 2, or (4) re-

submittal of the initial preliminary plan as “final” in the scenario where no changes are needed. Local units who are most adept with these review processes place the burden of verification with the submitter to complete the process with a revision and/or re-submittal. In development site plan reviews, this process appropriately places said burden on the submitter to perform in order to meet the statutory or rule requirements established by the permitting agency.

Preliminary “Work Program” Submittals

A preliminary-final work plan submittal could seemingly be applied in a similar fashion by MDEQ to Act 381 work plans. A conceptual approach here might have MDEQ require submitters to provide a comprehensive conceptual work “program” for the project – which could include all of the anticipated eligible activities to be conducted in order to successfully complete the proposed redevelopment project. Because brownfield sites may have insufficient data at the time of preliminary plan submission, the conceptual work program might have an “anticipated” course of activities, as well as one or more alternative tracks if real data, once such data is in-hand, present the need to proceed under the alternative track(s). In any event the developer/BRA and any related lender can proceed with the confidence that the work needed will be funded as it is defined.

Review and Monitoring

The developer/BRA would submit progress reports and, if requested by MDEQ, intermediate work plan amendments to confirm the scope of work to be performed. If MDEQ determined that a work task was unnecessary, MDEQ could omit that task or disallow eligibility without jeopardizing any other properly performed or necessary tasks.

Summary

This proposed approach, if implemented, would provide the timely responses and financial commitments that some projects need, while ensuring MDEQ can meet statutory and policy obligations under Act 381 and Part 201. An initial recommendation might be for MDEQ to test this approach and, if successful, implement it for all projects.

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Sample Approval Letter

Attached is a sample approval letter that could be used as framework fro this approval process – subject to lender review and concurrence.

2006 BROWNFIELD SBT CREDIT PROGRAM GUIDELINES

PROGRAM OBJECTIVES

The purpose of Michigan's brownfield redevelopment Single Business Tax (SBT) credit program is principally to address existing brownfield conditions on significant sites in order to make them competitive with non-contaminated or greenfield development sites. Secondly, the program is designed to address weak market conditions, high risk and other negative business factors in order to spur private development activity and investment on brownfield sites.

The Michigan Economic Growth Authority (MEGA) will give priority to projects that are located in Qualified Local Governmental Units (QLGU), based on PA 146 of 2000, or reuse significantly environmentally challenged sites. Additionally, preference will be given to projects that are of sufficient scale to transform the surrounding area in which they are located.

OVERALL GUIDELINES

In addition to statutory requirements, all projects submitted under the "small credit" program, as well as "large credit" projects (over $10 million) submitted through Michigan Economic Growth Authority (MEGA) will be considered only if they meet the following overall guidelines. Notwithstanding the guidelines below, individual projects are not considered approved until they have received formal notification of such approval from either the MEGA Board or Chair of the MEGA Board.

- The host community is a willing participant in the project and is making a substantial local financial/fiscal contribution through vehicles such as tax increment financing, tax abatements, land cost write-downs, Neighborhood Enterprise Zones, Obsolete Property Rehabilitation, local revolving loan funds, façade grants, etc.

- The intent of this program is to have tax increment financing (TIF) capture to pay for the cost difference of developing a brownfield site as compared to a greenfield site. The Brownfield Redevelopment Authority Work Plan is expected to cover the cost of all eligible activities via its tax increment financing capture. Extraordinary costs related to the project that arise from the site's status as a brownfield, such as due care, additional response activities and (in QLGUs only) demolition, site preparation, infrastructure improvements and lead and asbestos abatement should be dealt with through the TIF Work Plan and not the SBT credit.

- It is expected that use of the TIF for a project will improve the condition that qualifies the site as a brownfield. In cases where a project qualifies as a "facility", adequate due care and response activities must be addressed. In cases where a project qualifies as a brownfield due to blight or functional obsolescence (in QLGUs), the TIF tax capture must

significantly improve or affirmatively cure the brownfield condition. Eligible investments must include a significant investment in capital improvements to the structure or structures.

- Only after the Brownfield Redevelopment Authority TIF tax capture has mitigated the excess costs of site development related to brownfield conditions will an SBT credit be considered. This consideration will be based on a quantitative and qualitative business case that demonstrates that the project will not be undertaken without an SBT credit. The business case must include an analysis of market conditions, expected return on investment and justification of the ROI versus a non-incented project.

- Property acquisition costs of significantly disadvantaged sites must be reasonably proportional to the acquisition costs of non-brownfield properties.

- Projects located in areas or on properties that are desirable locations experiencing increasing market demand and property values, that do not substantially improve real property conditions or do not stimulate other non-subsidized growth in the community will generally not be considered for an SBT credit.

MIXED USE PROJECT GUIDELINES

- A mixed-use project is defined as one which incorporates multiple land uses including residential, retail, office and cultural/entertainment in a single or connected structure(s).

- Preference will be given to mixed-use projects that are located in the traditional downtown or within immediate walking distance of the downtown area. Significant development "nodes" or walkable neighborhoods within a QLGU are also a priority.

- High density projects which incorporate market-rate housing, around-the-clock activity and contribute to safe and walkable downtown or near-downtown neighborhoods are particularly encouraged.

- Adaptive re-use of existing vacant and deteriorated structures, especially if they embrace historic rehabilitation, will be given special consideration.

- For housing oriented projects, priority will be given to unsubsidized market rate housing, (including housing financed with tax exempt bonds subject to volume cap of the state of Michigan). Housing projects of any variety that act as a catalyst to significantly improve a neighborhood will be considered on case by case basis.

RETAIL PROJECT GUIDELINES

- Because retail-only projects are driven primarily by market demand, the business case necessary for the MEGA to consider brownfield incentives must be particularly compelling. Qualitative and quantitative data must be presented that justifies the use of an SBT credit for a retail project versus a non-incented retail project.

- The MEGA will in most circumstances not consider "big box" or "category killer" retail operations unless they anchor a retail center that includes other independent local retailers and is located in a historically underserved market with significant retail leakage to surrounding areas.

- Priority will be given to retail projects that are located in traditional downtown areas or significant commercial nodes and that complement rather than compete with the existing retail base. Convenience retail centers are preferred to comparison retail centers.

MANUFACTURING PROJECT GUIDELINES

- Manufacturing projects which re-use existing vacant, functionally obsolete and/or blighted industrial facilities will be given priority for SBT credits in this category.

- Preference will be given to established, Michigan-based manufacturers trying to meet the pressure of national or international competition and who preserve or create new jobs.

- High-growth potential technology-based companies are also encouraged to utilize the brownfield SBT credit incentive, particularly if they fall within the definition of the 21st Century Jobs Fund.

APPLICATION PROCESS

The guidelines outlined above should not be considered a complete list but provide a framework by which MEGA will screen projects for incentive consideration. Communities, developers and companies are strongly urged to communicate their interest and intentions for brownfield incentive consideration as early as possible.

The Notice of Intent (NOI) and Application have been streamlined into one document. The application now has two parts. Part I of the application will replace the former NOI. Once MEGA receives Part I of the application, staff will be assigned to review the project, which may require a project scoping meeting and site visit to be held in advance of submission. This process will ensure that sufficient information and timely feedback are provided. Submission of complete and accurate information by the applicant for Part I of the application will expedite the turnaround time. Once the project has been reviewed internally, staff will contact the applicant to indicate whether or not Part II of the application will be invited. Part I and Part II of the application as well as required attachments make up a full, administratively complete application.

All brownfield projects will be assessed a fee to assist with administrative expenses. Brownfield projects with credits of $1 million or less will be assessed a $2,500 application fee payable upon submittal of Part II of the application. An administrative fee of one percent (1%) of the credit amount, less the $2,500 application fee will be payable prior to the issuance of the project Certificate of Completion. Credits over $1 million will require a $5,000 application fee payable upon submittal of Part II of the application and an administrative fee of one-half of one percent (1/2%) of the total pre-approved credit amount, up to $100,000. One half of the administrative fee is due prior to the issuance of the Pre-Approval Letter and the balance is due one year from the date of the Pre-Approval Letter.

To begin discussions on potential projects or share concerns or questions, please contact MSHDA's CATeam representative directly or call MEDC's Customer Assistance Center at 517.373.9808.

Please submit application (Part I and/or Part II) to:

Michigan Economic Development Corporation
Michigan Economic Growth Authority
Brownfield Redevelopment
300 North Washington Square
Lansing, Michigan 48913

Please note: If application and required attachments are not received through the above address, applications will not be considered administratively complete.